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Supreme Court, U.S.
FILED

NO. 97-48 JUL 3 1997

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

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Janet L. Douglass,
Petitioner,

v.

The United States of America, et. al.,
Respondent

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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

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Janet L. Douglass
Petitioner

Janet L. Douglass
4600 E. Jim Mitchell Trail
Colleyville, TX 76034
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Pro Se Petitioner

76 pp

## QUESTION PRESENTED

**Q:Are government officials in violation of the first amendment by establishing the practice of a religion, witchcraft? Q: Plaintiff seeks to sue defendants in their individual capacity as well as official capacity claims a *Bivens* action. The Court has ruled officials, employees of the FAA have absolute immunity and the alleged employee (black witch) who is practicing "witchcraft" on Petitioner is immune from liability since the Court ruled the subject was outside the scope of the underlying suit.Q: Does the use of witchcraft on another constitute a "factor" counseling hesitation in applying the "Bush" theory to a "Bivens" action? Q:Is the government official or employee,under oath of office by affidavit to uphold the constitution, bound to that oath? Q: How can a comprehensive administrative procedure with substantive provisions set out by congress in the CSRA and FTCA, be a meaningful substitute for triable claims of civil and common law violations, when the administrative hearing process allows hearsay? Q: Is the CSRA the exclusive remedy at law for a qualified handicap individual in the government? Q: Can summary judgment lie over the Privacy Act violations if there is genuine issues of material fact by evidence, liability and there are extensive damages involved with no correction by the FAA? Witchcraft is involved, therefore, how can a fair ruling be had in any part of this case since it appears to be a precedent?**

LIST OF THE PARTIES

RESPONDENTS:

The UNITED STATES OF AMERICA AND;
The Attorney General of the U.S. at Washington D.C. and
The U.S. Attorney at Fort Worth Texas (817) 798-3291
The Department of Transportation, Secretary and Successors;400 7th St. S.W. Washington D.C.(202) 366-4000
The Federal Aviation Administration, Administrator and Successors; 800 Independence Ave.,SW; Washington (202)267-8213
The Federal Aviation Administration, Southwest Region Administrator and Successors; 2601 Meacham Blvd;Fort Worth,Tx (817)222-5001
Thomas J. Lucas in Capacity of Assistant Manager Federal Aviation Administration and Individually; SW Region 4601 Meacham Blvd; Fort Worth, TX (817)222-5000
Marvin Benson in Capacity of Supervisor Federal Aviation Administration SW Region Technical Inspection Office and Individually; SW Region; 4601 Meacham Blvd; Fort Worth,TX (817) 222-5000
Roger G. Knight in Capacity of Manager Flight Standards Division Federal Aviation Administration, Southwest Region and Successors and in the Capacity of Acting Regional Director Southwest Region and Individually; 2601 Meacham Blvd; Fort Worth,TX (817) 222-5000
Walter M. Ernst, Jr. and Loyd M. Halliburton in Capacity of Managers Federal Aviation SW Region Certificate Management Office and Individually; 1205 Royal Lane,Irving,TX
Ronald H. Peay, in Capacity of Manager, Federal Aviation Administration SW Region Civil Aviation Security Division

and in Capacity of Manager, Investigations and Internal Security Branch and Individually; 4601 Meacham Blvd; Fort Worth, Tx(817)222-5000
Peter B. Dodd in Capacity of Investigator, Federal Aviation Administration SW Internal Security Branch and Individually;4601 Meacham Blvd; Fort Worth, TX (817)

PETITIONER:
Janet L. Douglass
4600 East Jim Mitchell Trail
Colleyville, TX 76034 (817) 351-1550

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REASONS FOR GRANTING THE PETITION

I. Government Officials have corrupted themselves, they are absolutely immune to liability, under the CSRA and FTCA, officials are sheltered by this Courts ruling *Bush v Lucas, 462 U.S. 478 (1983)*. Blasphemy and Breach of Peace are presently not federal crimes; there remains a separation of church putting that aside for the moment. Petitioner would establish government officials have

committed blasphemy by the practice of witchcraft and asks what effect that impact might have on the future course of our government and our nation.

II Lower Court's rulings are in conflict with well-established laws, moreover, there are no laws against witchcraft, or similar situations found in case law. Therefore, Petitioner claims the lower Court's orders cannot properly address her all her claims. Therefore, this case is properly before this court for decision, since the point of view the court has taken needs to be weighed including the witchcraft in each issue.

III. The decisions of the U.S. District Court for the Northern District Fort Worth Division are Erroneous. The Court refuses to acknowledge important material facts about her case and has dismissed claims most of her claims. The Court refuses to recognize genuine issues of material fact and to acknowledge all the facts in Petitioner's pleading as true.

IV. The Questions Presented are Important for the direction of our Country very well may depend on your decision in this case. If witchcraft is allowed to rule Government, Petitioner claims our nation will become second rate and it will destroy itself. We all know the pictures Petitioner presents to you are allowed by God. Petitioner would allege that it may be time to bring witchcraft out of the closet, it exists our society.

CONCLUSION

APPENDIX A - Orders from the U.S. Court of Appeals, Fifth Circuit.

APPENDIX B - Memorandum and Opinion and Orders from the U.S. Federal District Court, Northern District of Texas, Fort Worth Division

APPENDIX C - Fifteen Photographs of witchcraft and Glory of God - in spiritual warfare over Petitioner, bringing this information to this Court.

## TABLE OF AUTHORITIES


U. S. CONSTITUTION
First Amendment
Third Amendment
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Fifth Amendment
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Fourteenth Amendment

ACTS OF CONGRESS
American Disability of Act of 1990 (ADA)
Civil Service Reform Act of 1964 (CSRA)
Privacy Act of 1974 (PA)
Whistleblower Protection Act of 1989, P.L. 101-12 with Amendment of October 29, 1994. (WPA)

STATUTES
Title 42 Section 12111
Title 42 Section 1981

Title 42 Section 1983
Title 42 Section 1985
Title 42 Section 1986
Title VII, Section 2000 et seq.
Title 28 Section 1943
Title 28 Section 1946

CASES

Bivens v Six Unknown FBI Agents, 403 U.S. 388 (1971)
Bush v. Lucas, 462 U.S. 367 (1983)
Douglass v Department of Transportation, 60 MSPR 1 (1993)
Butz v. Economou, 438 U.S. 478 (1978)
Chandler v. United States, 875 F.Supp.1250,1266(N.D.Tex.1994)
Conley v. Gibson, 78 S.Ct. 99 (5 Cir 1957)
Egger v. Phillips, 710 F.2d 292
Harlow v. Fitzgerald, 457 U.S. 800 (1982)
Graham v. Connor, 109 S.Ct 1965 (1989)
Griswold v Connecticut, 381 U.S. 479 (1965)
Griffin v. Breckenridge, 403 U.S. 101-102 n.9,91 S.Ct at 1797-98
Jarrell v U.S. Postal Service, 243 App.D.C. 350, 753 F.Wd 1088,36 BNA FEP CAS 1169, 36 CCH EPD P. 34959, 40 FR SERV 2d 1005, (DC Dist Col) 41 CCH EPO P 36685, Dc Dist Col, 656 F.Supp 237, 43 BNA FEP CAS 36, EPO P36802
Jenkins v. Blue Cross Mut. Hospital Ins., Inc. 538 F2d 164 (1976, CA7)
Kassel V Veterans Admin. 709 F Supp 1194(DNH 1989)
Katz v. U.S.A.,389 US 347
Kemer v. Johnson, 900 F.Supp.677,681 (S.D>N>Y.1995)

Lapin v. Taylor, 475 F.Supp 446 (1979)
Leatherman v. Tarrant County Narcotics Unit, 113 S.Ct 1160 (1993)
McNutt v Hills, 426 F.Supp 990, (1977, DC Dist.Col)
Monell v. Department of Social Services of the City of New York, 463 U.S. 658 (1978)
Penn v United States, 350 F.Supp 752 (1972 MD)
People v. Ruggles, 8 Johns (N.Y.) 290, 5 Am.Dec. 335.
Pope v. Bond, 641 F.Supp 489 (1986)
Rollins v. Marsh, 937 f.2d 134, 139-140 (5th Cir. 1991)
Scheuer v. Rhodes, 416 U.S. 247-248 (1974)
Shannon v. General Electric Company, U.S. Dept. Energy, 812 F.Supp 308(N.D.N.Y 1993)
Zabala Clemente v. U.S.A., 567 F.2d1140, 1149 (1st Cir) Cert.Denied 435 U.S. 1006,98 S.Ct 1876,56

Janet L. Douglass respectfully petitions for a writ of certiorari to review the Order/s of the United States District Court for the Northern District, Fort Worth Division. Petitioner claims this case contains an important issue, which is a "first impression," a federal question that has not been, but should be settled by this court.

## BELOW

The Opinions of the U. S. Court of Appeals for the Fifth Circuit (App. infra, A) reported as No. 96-11261. The Opinions of the District Court (App., infra, B) reported at No. 4:94-CV-364E.

## JURISDICTION

The Fifth Circuit Court of Appeals entered its Order on Rehearing April 8, 1997. Therefore this Writ for Certiorari is timely filed within 90 days from April 8, 1997. Jurisdiction is invoked under Title 28, U.S.C. Section 1254(1)

## STATUTORY PROVISIONS INVOLVED

Witchcraft claims of this nature are a first impression for the U.S. Supreme Court, there exists no statutory provisions against the practice of witchcraft. Title 42 Sections 1983/5/6, Petitioner claims a Bivens supra, remedy claiming officials have acted outside the scope of their employment in a conspiracy to Maliciously Prosecute her using witchcraft and violating the First and Fourth Amendments. Court ruling insists Petitioner's only remedy is under the CSRA and FTCA, affording officials absolute immunity from any personal liability. Petitioner claims a Bivens supra action. The Privacy Act of 1974 was violated by Defendants' since

in concert they breached their promise of anonymity and widely published her name (coded as a control number, a particular identifier)and made press releases without her express written consent. The Americans with Disabilities Act of 1990 allows filing suit against officials in their "covered" capacity and individually 42 U.S.C. Section 1981.

## STATEMENT OF THE CASE

Petitioner, an employee of the Federal Aviation Administration (FAA) in January 1988 made a protected disclosure to FAA and Department of Transportation (DOT) Hotlines and requested she remain anonymous concerning a high level official who allegedly built his house with government money and employee talent.[1]

August 1990, Petitioner was forced into another Division, where the Division Manager was the acting regional director when she blew the whistle, she sensed mild harassment resulting from the change of duties.[2] By summer of 1992, the harassment intensified, with bogus reprimands, oral and written, then a bogus removal in May 1993, she no longer had protection from the FAA Administrator who promised her no retaliation would happen he would not allow it.

As a result of the bogus removal, officials discriminated against Petitioner and she the filed formal complaint June 1993. (Petitioner was falsely accused of assault charges and

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[1] The FAA reassigned allegedly a black witch, Ms. Laverne Smith Scales, a degreed engineer into her section early 1989.

[2] Psychically, strange feelings began occurring October 1990,Petitioner started a journal tracking the energy she was feeling.

was suspended March 29, 1993 for 10 hours.). Petitioner appealed the removal to the MSPB and it was found to be illegal. The administrative law judge in his Opinion December 1993, only restored her records pending a final decision from a Petition for Review. The administrative law judge placed her on a stay under the provisions of the WPA of 1988. However, prior to any final decision in the appeal, the deciding official ordered her back to the workplace Valentine's day, February 14, 1994 where he sexually harassed her along with other officials creating an intensified hostile work environment. He removed her from a flexible work schedule she had maintained for almost 2 years, eliminating the 10 hour day, 4 day work week she enjoyed to continue her college education. Petitioner filed a discrimination complaint, since male peers enjoyed the 10 hour day, 4 day work week based on sex.

Petitioner developed ulcers, but the deciding official would not grant her the needed sick leave to recuperate away from the hostile work environment and her condition worsened. Finally a physician sent a letter to the deciding official stating that her condition had worsened while on a medication program to cure the ulcers stating that if she did not have the needed time away from the stress, her condition would be guarded. Petitioner filed two sexual harassment formal complaints, and another discrimination complaint because of she is a diabetic and a qualified individual.

Petitioner was forced to file this lawsuit in Federal Court since the deciding official refused to grant her sick leave in an attempt to force her to quit her job. Petitioner moved the Court for an injunction to prevent a second removal by the

deciding official stating that he was retaliating against her that he knew she was the Whistleblower and stood on the provisions of the WPA. The Court denied her injunction, refusing to invoke supplemental jurisdiction but ordered the needed sick leave to recuperate. The deciding official continued with his goal to remove her while she was on sick leave, but he did not have any substantial reason to do so. The deciding official then decided to investigate her to find a reason to remove with no success. Petitioner complained he violated her U.S. Constitutional rights specfically: first, third, fourth, fifth, sixth, eight, ninth and fourteenth amendments by his investigation into her private life, her activities outside duty time. The deciding official who knew she was a Whistleblower, which is stated on the record of the Merit Systems Protection Board, MSPB, hearing, (See Douglass, supra) retaliated and removed her a second time August 11, 1994, alleging she abused sick leave and was uncooperative about his investigation into her private life because Petitioner would not give FAA investigator's verbal or written consent to invade her privacy. Investigators held at least three meetings forcing Petitioner off sick leave each instance to harass Petitioner in an attempt to coax Petitioner into answering investigator's questions the way that would clear them from any violations they had committed against Petitioner. Petitioner cried for relief from the federal district entering motion for injunction to stop the investigation, but Court silently watched. Two days after Petitioner was removed from government employ, the FAA payroll supervisor wrote a demand letter to Petitioner's financial institution stating that Petitioner owed the government money and required them to send all of Petitioner's money from her checking and savings account immediately to the U.S. Treasury without Petitioner's

consent or knowledge in violation of procedural due process of law and fraud. Petitioner appealed the removal all the way to the U.S. Supreme Court, and Cert was denied February 1995, the WPA did not merit Supreme Court review.

Petitioner experienced the first psychic death blow, the evening before the day of her deadline to reply to the Court October 1994. See People supra. This psychic energy began to penetrate her heart area while she was typing. Petitioner was wearing an amethyst ring, as she was rubbing her heart area, the stone repelled the energy and it hit her leg as she sat. Petitioner then remembered the warning she was given by fellow workers about witchcraft and eluding to LaVerne Scales. Soon the energy hit her head, at the temple, and again, the amethyst prevented the energy from penetrating her skin. Petitioner got a mirror and tried to reflect the energy from her. Petitioner left her home at 4:30 a.m., while she was running out the door, the psychic energy was on her left shoulder blade, around the heart area. She went to the Chapel and began to pray, the attack stopped, at daylight she returned home. These attacks began nightly, gaining in intensity until they were frequent through the night and day. The attacks at night were so strong, that she filed a complaint with the local police, April 1996 requesting they confiscate any voodoo doll identity of Petitioner on Ms. Scales' alter to destroy the energy. The Police did nothing since there are no laws against witchcraft, but in jest, stated if Petitioner brought the police a picture of the witch, they would look into it. That night, Petitioner put two 35 mm Camera's in her room and one camcorder. April 19, 1996 Petitioner was successful in capturing a photograph of the alleged Ms Scales, FAA witch, (see Appendix C Photograph 3.). The police did nothing after

the photo was presented, stating there was no unlawful act committed. Petitioner began taking pictures every night, learning the true story. Petitioner presents that story to you by Appendix C. Petitioner, who constantly received hang-up calls, through the night, began to realize the connection was maintained through the telephone. Petitioner filed many complaints with the local police over telephone harassment. Petitioner was unsuccessful at changing her number at least eight times, each time the hang-up calls would continue. January 1997 her caller ID indicated 11 such calls in a 24 hour period. Petitioner notes that the camera can see the person on that energy level, and so can her dog. Just because the human eye cannot see, it does not mean it doesn't exist, we just can't see it, like a microwave. Witchcraft is dangerous, it's covert and deadly. Petitioner claims the Supreme Court has no case law about this subject since the victims usually die, or go insane. Pope supra

## REASONS FOR GRANTING THE WRIT

CONFLICT: In this case, the Court has ruled in a manner that is in conflict with other case law ruled on by the Supreme Court. Petitioner claims the FAA is liable to her for violations about the PA and she has claimed extensive damages. The ruling granting a summary judgment in this case is in conflict with Jarrell supra. Petitioner states the ruling that her common-law claim of malicious prosecution falls exclusively under the FTCA is in conflict with Zabala supra. Petitioner states the ruling on sovereign immunity is in conflict with the Supreme Court ruling in Monell supra. The Court's ruling dismissing Petitioner's claims of discrimination based on Religion, Race and Physical

Handicap for qualified individual brought under 42 U.S.C. Section 1981 with the court ruling her exclusive remedy is under provisions of the CSRA and cannot claim remedy under 42 Section 1981 action not even under the ADA. This ruling is in conflict with McNutt and Penn and Jenkins.

NATIONAL INTEREST: This case is a "first impression" case that exposes a deadly cult, one that destroys nations of people. If the United States is to stay strong, we need to ban people from using Satan to murder and influence evil penetration on our nation of people. Strong laws that support the 10 Commandments will weaken Satan. Petitioner has stated all along this is God's case and it is time to reveal Satan for what he truly is -- a wimp. Petitioner alleges God wants this unseen world known, people make it easy for Satan's evil influences to rule our weaknesses. That is how the Satan has a hold of this nation, he has no boundary between church and state, Satan influences what you allow through influencing your thoughts and actions to do his evil works and he is presently winning in the government workplace where he rules. Look hard at the Oklahoma City Bombing, the Waco incident, your find a person void of a heart, no conscience, never sad or happy because Satan destroyed the soul of the person. Satan probably convinced that cult of people recently in California to slaughter themselves by self-infliction of death (breaking a Commandment) influencing them into believing they would go to Heaven. Our society is so infested with evil influences, we are even allowing and accepting homosexuality as O.K in our society. The witch is a perfect example of how Satan destroys a human being for wishes granted. In carnal form she is a woman, in sprit form as you can see, she is half

man, empty inside, mostly animal complete with tail, beard, long hair and a mustache, hence you have a lesbian on this plane. The witch will preside over your life by wishes granted to her by Satan in trade for her soul. She will never have human feelings or desires she is empty, void of any love, she is an animal who thrives on destruction, and human blood.

## CONCLUSION

The conclusion is up to this Court. The Satan takes what he can influence and uses that person, creature to destroy as much of God's territory as he can muster, those people who are influenced end up like the witch presented hereto in Appendix C, or like McVeigh in the Oklahoma City Bombing. The wimp wins twice over when he causes human being to break a Commandment. Note the many airplane crashes that are unexplainable, FAA has invoked Satan, he will take as much of the government as you allow. Petitioner prays and asks God to speak to the justices of this court; prays God opens their minds and ears to hear the truth; she prays for relief to set this nation free from Satan's control, prays this Honorable Court put on the helmet and the breast plate and stand still; accept this writ and make a difference for this nation.

Respectfully submitted,

Janet L. Douglass
Pro Se Petitioner

## CERTIFICATE OF SERVICE

I, Janet Douglass, Petitioner, by signature above, does hereby certify that on this 3 day of July 1997, one copy of

this Petition for a Writ of Certiorari in the above-styled entitled case was mailed, first class postage prepaid to:

Solicitor General of the United States
Room 5614, Department of Justice
10th Street and Constitution Ave., N.W.
Washington, DC 20530

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT CAUSE NO. 96-11261

1. April 8, 1997, Order on Petition for Rehearing

2. December 4, 1996 Order Dismissing Appeal

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 96-11261

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JANET LOU DOUGLASS,

Plaintiff-Appellant

versus

UNITED STATES OF AMERICA ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:94-CV-364-E

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ON PETITION FOR REHEARING

Before HIGGINBOTHAM, DAVIS, and DUHE, Circuit Judges.

PER CURIAM:

IT IS ORDERED THAT the motion for reconsideration,

- which we treat as a petition for rehearing is, DENIED.

IT IS FURTHER ORDERED that the motion to supplement

the motion for reconsideration is DENIED.

FOR THE COURT:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 96-11261

---

JANET LOU DOUGLASS,

Plaintiff-Appellant

versus

UNITED STATES OF AMERICA ET AL.,

Defendants-Appellees.

---

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:94-CV-364-E

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Before HIGGINBOTHAM, DAVIS, and DUHE, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the second motion of appellant to

supplement the motion for reconsideration is DENIED.

IT IS FURTHER ORDERED that the motion of appellant for

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 96-11261
USDC No. 4:94-CV-364-E

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JANET LOU DOUGLASS,

Plaintiff-Appellant

versus

UNITED STATES OF AMERICA ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas

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Before HIGGINBOTHAM, DAVIS, and DUHE, Circuit Judges.

BY THE COURT:

This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). In this civil rights action, the plaintiff has filed a pro se notice of appeal from (1) an order entered on May 22, 1996, dismissing most of her claims and requiring her to file an amended complaint as to the remaining claims, and (2) an order entered on September 23, 1996, denying her motion for reconsideration of the May 22, order. Rule 54(b), Fed. R. Civ. P., provides that "[w]hen more than one claim for relief is presented in an action, ... or

when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." In the present case, the district court has not certified the orders for appeal,[2] and accordingly, the appeal must be dismissed. See Borne v. A & P Boat Rentals No. 4, Inc., 755 F.2d 1131, 1133 (5th Cir. 1985); Thompson v. Betts, 754 F.2d 1243, 1245 (5th Cir. 1985). See also Kelly v. Lee's Old Fashioned Hamburgers, Inc., 908 F.2d 1218, 1220-22 (5th Cir. 1990) (en banc) (setting out standard for determining whether a judgment has been certified for appeal under Rule 54(b)).

APPEAL DISMISSED.

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[2] For the benefit of the pro se litigant, we point out that the district court was not required to grant Rule 54(b) certification, even if such had been requested.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

1. March 10, 1997 Order Denying Request for Partial Certification

2. January 24, 1997 Order Denying Unopposed Motion to Certify Court's Order as Partial Final Judgment

3. January 16, 1997 Order Denying Motion to Investigate and Confiscate

4. October 8, 1996 Order Retaining Record in District Court

5. September 23, 1996 Order Denying Motion for Reconsideration of May 21, 1996 Order

6. May 21, 1996 Memorandum Opinion and Order

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

| | | |
|---|---|---|
| JANET LOU DOUGLASS | )( | |
| | )( | 4:94-CV-364-E |
| vs. | )( | |
| | )( | |
| UNITED STATES OF AMERICA, ET AL. | )( | |

ORDER

Before the Court is plaintiff Janet Douglass' motion for reconsideration of the Court's order denying her request for a partial certification under Fed.R.Civ.P. ("Rule") 54(b). Nothing in Douglass' motion calls into question the Court's earlier order. It is therefore ORDERED that her motion for reconsideration of the Court's earlier order denying her motion for partial certification under Rule 54(b) is DENIED.

Douglass also asks the Court to reconsider its order denying her motion to investigate and confiscate. In that motion, Douglass asserted that a Federal Aviation Administration ("FAA") employee, who was alleged to be a black witch, was trying to harm her through the use of various forms of black magic, including, but not limited to, the use of voodoo and hoodoo witchcraft. Douglass asked the Court to investigate this employee and confiscate any "voodoo dolls, candles, knives, swords, found upon any black witch's alter with her [Douglass'] name ..." In her motion for reconsideration, Douglass further asks that

Laverne Smith Scales, the alleged black witch, be joined as a party in accordance with Rule 19(a).

Under Rule 19(a), a person should be joined as a party to the action if in the person's absence complete relief cannot be accorded among the parties. Rule 19(a) does not require the joinder of Laverne Smith Scales. Douglass cannot obtain relief against an individual FAA employee for alleged violations of Title VII. The proper defendant in a Title VII action is the head of the agency alleged to have engaged in the discriminatory conduct. Lamb v. United States Postal Service, 852 F.2d 845, 846-47 (5th Cir. 1988). Accordingly, the Court ORDERS that Douglass' request for reconsideration of the Court's order denying her motion to investigate and confiscate is DENIED.

Douglass shall file her amended complaint as provided for in the Court's January 24, 1997 order within thirty (30) days of the date this order if filed. Douglass is again advised that failure to comply with this order may result in sanctions being imposed against her.

The Court further ORDERS that the parties shall within forty-five (45) days of the date of this order meet and prepare a joint status report. At the meeting, the parties shall agree on a date for completion of discovery, and proposed pretrial conference and trial dates.

Because Douglass is proceeding pro se, defendant shall be responsible for initiating this meeting and preparing the joint status report. Douglass, however, shall cooperate fully in the entire process.

Signed this 10th day of March, 1997.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

| | | |
|---|---|---|
| JANET LOU DOUGLASS | )( | |
| | )( | 4:94-CV-364-E |
| vs. | )( | |
| | )( | |
| UNITED STATES OF AMERICA, ET AL. | )( | |
| | )( | |

## ORDER

Plaintiff Janet Douglass has filed an unopposed motion asking the Court to certify its May 21, 1996 Order as a partial final judgment under Fed.R.Civ.P. ("Rule") 54(b). For the reasons set out below, the motion is denied.

## I. FACTS

Briefly, Douglass alleges the following facts. Douglass was employed by the Federal Aviation Administration ("FAA"). In 1988, she allegedly discovered what she believed to be criminal activity by a FAA manager. Based on this discovery, Douglass made what she believed to be an anonymous report about the manager's activities to the Department of Transportation Inspector General's Office and the FAA complaint hotline. But she found out later that others within the FAA knew that she was the caller. As a result of the disclosure of her identity as the caller, persons within the FAA retaliated against her by subjecting her to various constitutional and non-constitutional torts.

In 1990, Douglass was allegedly forced to transfer to another division within the FAA, headed by Walter Ernst. While under Ernst's supervision, Douglass was allegedly subject to various forms of harassment. Douglass further alleges that as a result of false charges brought by a fellow employee she was placed on an impossible performance improvement plan. When she was unable to meet the performance plan standards, she was fired. Douglass appealed to the Merit System Protection Board, and the Merit System Protection Board reinstated her.

After returning to work, Douglass began experiencing medical problems and used up most of her sick leave. During this same period, FAA officials began investigating Douglass' abuse of the sick leave policy. Douglass alleges that the investigation resulted in numerous violations of her constitutional and non-constitutional rights. Eventually, Douglass' employment with the FAA was terminated, and Douglass brought this suit.

Defendant United States of America ("government") moved for dismissal and/or summary judgment on Douglass' claims. On May 21, 1996, the Court dismissed most of Douglass' claims and granted summary judgment for the government on one of Douglass' claims. Remaining for further consideration were Title VII claims for sexbased discrimination and discriminatory reprisal. The order also provided that Douglass could re-file any claims she might have alleged concerning reprisal by the FAA for her alleged protected whistle blowing activity.

On September 23, 1996, the Court denied Douglass' motion for reconsideration, and Douglass appealed. On December 20, the Fifth Circuit dismissed Douglass' appeal because this Court had not entered a partial final judgment

under Rule 54(b). Douglass now asks the Court to certify its May 21 Order as a partial final judgment.

II. ANALYSIS

Rule 54 provides that "[w]hen more than one claim for relief is presented...or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." "One of the primary purposes behind Rule 54(b) is to avoid piecemeal litigation, ...{a}and a district court should grant certification only when there exists some danger of hardship or injustice through delay which would be alleviated by immediate appeal." PYCA Indus., Inc. v. Harrison County Waste Management Dist., 81 F.3d 1412, 1421 (5th Cir. 1996); Page v. Gulf Oil Corp., 775 F.2d 1311, 1312 n.2 (5th Cir. 1995). When deciding whether to enter partial final judgment, a court should consider such factors as whether the claim under review are separable from the remaining claims and whether the claims already determined are such that the appellate court would have to decide the issues more than once. Curtis-Wright Corp. v. General Elec. Co., 446 U.S. 1, 8, 100 S.Ct. 1460, 1465 (1980).Guided by these principles, a district court is to use its discretion to decide whether a partial judgment should be certified under Rule 54(b). See Jasmine v. Dumas, 726 F.2d 242 (5th Cir. 1984).

Douglass claims that without certification of the May 21 Order she will suffer irreparable loss because no further litigation can be had on those issues. She is incorrect. Douglass remains free to appeal any, or all, aspects of the May 21 Order after the entry of final judgment in this case.

Douglass has failed to show that there exists some danger of hardship or injustice if an immediate appeal is not allowed; therefore, certification under Rule 54(b) is improper.

Moreover, Douglass alleges that all her injuries stem from the disclosure of her identity as the caller to the FAA hotline. See, e.g., Plaintiff's First Amended Complaint at pp. 16, 31. Thus, if the Fifth Circuit were to hear multiple appeals in this case, it would have to hear more than once the facts and issues concerning the disclosure of Douglass' identity as the FAA hotline caller. Such a result supports the Court's decision not to enter a partial final judgment.

## III. CONCLUSION

Accordingly, the Court ORDERS that Douglass' motion for Rule 54(b) certification of the Court's May 21 Order is DENIED.

Douglass shall have thirty days from the date of this order to file an amended complaint in accordance with the instructions in the Court's May 21, 1996 order. If Douglass fails to file an amended complaint within this period, the Court will presume that Douglass does not wish to pursue whatever reprisal claim she might have alleged, and will proceed with her remaining Title VII claims of sex discrimination and discriminatory reprisal.

Douglass shall serve Secretary Pena with her amended complaint and provide proof of service to the Court.

Signed this 24th day of January, 1997.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

| | | |
|---|---|---|
| JANET LOU DOUGLASS | )( | |
| | )( | 4:94-CV-364-E |
| vs. | )( | |
| | )( | |
| UNITED STATES OF AMERICA, ET AL. | )( | |

ORDER

Plaintiff Janet Douglass has filed an motion to investigate and confiscate. The motion requests relief outside the scope of the underlying suit; accordingly, the Court ORDERS that the motion is DENIED.

Signed this 16th day of January, 1997.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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|---|---|---|
| JANET LOU DOUGLASS | )( | |
| | )( | 4:94-CV-364-E |
| vs. | )( | |
| | )( | |
| UNITED STATES OF AMERICA, ET AL. | )( | |

ORDER RETAINING RECORD IN DISTRICT COURT

It appearing that Plaintiff Janet Lou Douglass filed a notice of appeal with the Fifth Circuit Court of Appeals from the District Court's "Opinion and Memorandum of May 22, 1996 with final order entered in this action the 23rd day of September 1996." The order/judgment does not dispose of the case, and the use of the entire case record will be required in further proceedings in this case;

It is therefore ORDERED by the Court, pursuant to Rule 11(e), Federal Rules of Appellate Procedure, that the Clerk of this District Court shall retain the record or parts thereof subject to the request of the Court of Appeals.

It is further ORDERED that the Appellants file with the Clerk of Court a designation of record and a transcript order within ten (10) days from the filing of this order along with certified copies of the documents designated for transmission of the record to the Clerk of the United States Court of Appeals for the Fifth Circuit.

The Clerk of the Court shall transmit a certified copy of this order and of the docket entries together with the record designated to the Clerk of the United States Court of Appeals for the Fifth Circuit.

Signed this 8th day of October 1996.

**PUBLISHER'S NOTE :**

**ORIGINAL PAGINATION IS NOT CONTINUOUS.**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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|---|---|---|
| JANET LOU DOUGLASS | )( | |
| | )( | 4:94-CV-364-E |
| vs. | )( | |
| | )( | |
| UNITED STATES OF AMERICA, ET AL. | )( | |

ORDER

Before the Court is pro se Plaintiff, Janet Douglass' motion for reconsideration. Douglass does not present any new arguments or evidence that would cause the Court to change its May 21, 1996 order.

I. BACKGROUND

Douglass filed a complaint against the Department of Transportation, Federal Aviation Administration ("FAA"), and numerous individuals within the FAA. She alleged that during the course of her employment with the FAA she was subject to discrimination of various forms, unconstitutional and tortious actions were taken against her, and her rights under the Privacy Act were violated. The Court dismissed most of her claims, some with prejudice and some without prejudice, granted the government summary judgment on one claim, and ordered Douglass to file an amended complaint as the the remaining claims.

II

Much of Douglass' motion contains arguments that were addressed in the Court's earlier order; therefore, these

points will not be discussed again. But Douglass does raise several oints that require some discussion.

A. American with Disabilities Act ("ADA")

After reviewing the complaint and the Court's May 21, 1996 order, it appears that the Court did not sufficientl address Douglass' ADA claim. Nevertheless, the claim still fails.

The ADA provides that "no covered entity may discriminate against a qualified individual with a disability because of the disability of such individual in regards to ....terms, conditions, and privileges of employment." 41 U.S.C. Section 12112(a). A "covered entity" is an employer, employment agency, labor organization or joint labor organization, or joint-labor management committee. 42 U.S.C. Section 12111(5). The United States is specifically excluded from the ADA's definition of employer. Section 12111(5)(B)(i). Therefore, Douglass has no ADA claim against the FAA or the Department of Transportation as they are agencies of the United States. See Kemer v. Johnson, 900 F.Supp. 677, 681 (S.D.N.Y. 1995) (Because plaintiff sought to sue an agency as an employer under the ADA, plaintiff's ADA Claim was dismissed).

B. Malicious Prosecution Claim

Douglass contends that the Court erred when it dismissed her claims of malicious prosecution. The Court found that Douglass' malicious prosecution claims arose from her federal employment relationship, and relying on Rollins v. March, 937 F.2d 134, 139-140 (5th Cir. 1991), held that Douglass must first bring her claims under the Civil Service Reform Act. While the Court finds this analysis proper, it notes that even if this analysis were wrong Douglass still has no viable claim of malicious prosecution.

In this case, under either Texas common law or the Federal Tort Claims Act ("FTCS"), Texas malicious prosecution law applies. See 28 U.S.C. Section 1346(b) (law of place where incident occurred governs FTCA claims). To recover for malicious prosecution, a plaintiff must prove: (1) the commencement of a criminal prosecution against the plaintiff; (2) which has been caused by thedefendant or through the defendant's aid or cooperation; (3) which terminated in the plaintiff's favor; and (4) that the plaintiff was innocent; (4) that there was no probable cause for the proceedings; (6) that it was done with malice; and (7) that it damaged the plaintiff. Chandler v. United States, 875 F.Supp. 1250, 1266 (N.D. Tex. 1994). Douglass has failed to state a malicious prosecution claim. She does not allege that a criminal prosecution was ever initiated against her; consequetly, a criminal prosecution could not terminate in her favor. Moreover, in the instant motion, Douglass negates the existence of a malicious prosecution claim. She states, when setting forther her version of the events she believes give rise to her malicious prosecution claim, "[t]he investigation was sent to the Justice Department for criminal review of [sic] which was denied July 1, 1994." (Pltf's Mot. for Reconsideration, p. 9)

III. CONCLUSION

After reconsideration of the May 21, 1996 order, the record, the applicable law, and Douglass' arguments in the motion currently before the Court, the Court concludes the order was proper. Accordingly, it is ORDERED that Douglass' motion for reconsideration is DENIED. Doujglass shall file her amended complaint as provided in the Court's May 21, 1996 order no later than thirty days from the date this order is filed.

Signed this 23rd day of September, 1996.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

| | | |
|---|---|---|
| JANET LOU DOUGLASS | )( | |
| | )( | 4:94-CV-364-E |
| vs. | )( | |
| | )( | |
| UNITED STATES OF AMERICA, ET AL. | )( | |

MEMORANDUM OPINION AND O R D E R

Before the Court is Defendants' (collectively "government") motion to dismiss or for summary judgment. Plaintiff Janet Douglass argues vigorously that the government's position has no force because the government knows it acted in an unconstitutional manner. The Court finds that the majority of Douglass' claims should be dismissed, the government should be granted summary judgment on one claim, and the remainder of the claims must remain for future consideration.

I. FACTS

The following factual allegations are taken from Douglass' amended complaint.[3]

Douglass began her employment with the Federal Aviation Administration ("FAA") in 1978 as an administrative technician employed in the FAA Southwest Region. In 1988, she discovered what she believed to be criminal

[3] Douglass' factual account ends, for the most part, when her first complaint is filed. Where her factual allegations are insufficient, the Court will rely on the government's factual allegations. Such reliance will be noted in the text of this opinion.

activity by the manager of the Airway Facilities Division, Clinton Murphy. Motivated y her Amish beliefs and her Episcopal faith, which require her to follow God's law rather than man's law when there is a conflict between the two, Douglass reported the violations to the Department of Transportation Inspector General's Office and the FAA Complaint hot-line. When she placed the call to the hot-line, she requested and was granted anonymity. The FAA hot-line complaint sheet does not list her name. A caller is identified on the hot-line complaint sheet by her hot-line control number only.

After Douglass' disclosure to the hot-line, the Attorney General began an investigation into Murphy's allegedly illegal activities. On February 16, 1988, the FAA circulated an internal memorandum containing Douglass' allegations against Murphy and her hotline control, but it did not disclose Douglass as the complainant. Two weeks later, the Fort Worth Star-Telegram printed a story about the FAA's investigation into Murphy's Activities. Douglass' name was not contained within the article. On April 18, 1988, the FAA circulated a second internal memorandum concerning the investigation. Again, the memorandum contained Douglass' hot-line control number but not her name. On April 21, 1988, the Star-Telegram printed a second story, which did not include Douglass; name, stating that the Department of Justice found that Murphy did not violate any laws.

In the spring of 1989, Marvin Benson became Douglass' supervisor. Douglass states that Benson, who was a close friend of her ex-husband, was upset that she divorced her husband. Because of these feelings, Benson, who was not a psychiatrist, conducted daily evaluations of

Douglass' psychological well-being. He then used his evaluations as a basis for disciplining Douglass and requiring her to see a psychiatrist. Douglass further alleges that even though she completed the counseling and had previously been given satisfactory performance evaluations, Benson rated her work performance barely successful. In addition, Benson continually changed her performance criteria so that she could not meet them. Finally, Douglass states that Benson moved her office closer to where her ex-husband worked to inflict emotional distress upon her.

In August 1990, Douglass was allegedly forced to transfer to another division, headed by Walter Ernst. Douglass contends that while supervised by Ernst, she created a new computer automation system for which she did not receive proper credit, and she was verbally harassed by male employees in her office.

In August 1992, Douglass allegedly discovered that her office and other offices were engaged in a conspiracy involving the illegal compensation of night differential. She disclosed her discovery to another employee, who was African-American. Douglass however, did not know at the time that this employee was also participating in the alleged conspiracy.

Douglass further alleges that in September 1992, Ernst received a letter of complaint about Douglass, which contained fraudulent allegations. Later in the same month, Ernst gave Douglass a letter of reprimand. Further, in October 1992, Ernst did not allow Douglass to bid on a position for which she was eligible, thus violating certain FAA management policies. Eventually he awarded the position to someone other than Douglass. As a result of Ernst's actions, Douglass filed a complaint with the FAA

alleging job discrimination. The FAA has no record of this complaint.

Douglass states that in December 1992 two incidents caused her emotional distress. First, Roger Knight, whose title is not specified, promoted all the employees at Douglass' level, except Douglass', to a higher level. Knight allegedly knew about Douglass' hot-line complaint and did not promote her in retaliation for making the complaint. Second, Douglass contacted the FAA complaint hot-line and found out that her anonymous complaint made in 1988 could be accessed using her previously disclosed hot-line control number. Douglass contends this is when she first discovered that others could identify her as the whistleblower.

In early January 1993, Ernst placed Douglass on a ninety day performance improvement plan. Douglass believed this action was based on false assault charges filed against her by the African-American employee who was involved in the aforementioned conspiracy. Douglass did not meet the plan and was suspended on March 19, 1993. Later, she was fired. As a result of her removal, Douglass filed a complaint alleging job discrimination with the FAA and appealed her removal to the Merit Systems Protection Board ("MSPB"). The Equal Employment Opportunity Commission ("EEOC") Office never ruled on the complaint, but the MSPB reversed the decision to remove her. Douglass was reinstated and told to report back to work on February 14, 1994.

During the period she was not working for the FAA, Douglass filed two discrimination complaints, which alleged discrimination on the basis of religion.

Douglass alleges that she experienced medical problems as a result of her return to the hostile working environment. According to Douglass, Ernst, Loyd Halliburton, and other male employees received sexual satisfaction when they verbally abused her. In March 1994, Douglass was sick for much of the month and used up all her available sick leave. Also during this period, she was removed from the alternate work schedule, which allowed employees to work flexible ten hour days. Because of this removal, Douglass filed an additional job discrimination complaint with the FAA on March 15, 1944.

In April 1994, based on an anonymous letter, FAA officials began investigating Douglass' alleged abuse of sick leave. Specifically, the investigators wanted to know if Douglass had been attending classes at a local college while on sick leave. After obtaining her college records without her permission, the investigators determined, and Douglass later admitted, that she had been attending classes while on sick leave.

On May 2, and again on May 10, 1994, Douglass filed additional discrimination complaints alleging sexual harassment by Ernst and Halliburton, respectively.

The government contends that FAA officials instructed Douglass to appear for an interview concerning her sick leave abuse on May 24, 1994. One day before the interview, Douglass filed suit in federal court. She did not attend the interview. FAA officials then instructed Douglass to attend an interview scheduled for June 14, 1994. On June 13, 1994, Douglass filed a motion for temporary injunction, which was denied. On June 21, 1994, Douglass appeared at the interview but invoked the Fifth Amendment. After receiving a letter from the United States Attorney

indicating that Douglass would not be prosecuted for any action under investigation, the FAA attempted to interview Douglass again. Douglass still refused to cooperate, and the FAA began the process of removing her. On August 11, 1994, the FAA terminated Douglass' employment.

## II. ANALYSIS

### A. Discrimination Claims

#### 1. Non-Title VII Discrimination Claims

The government argues that the Court does not have jurisdiction to hear Douglass' non-Title VII claims. Such an argument is treated as a request for dismissal under Fed. R. Civ. P. ("Rule") 12(b), failure to state a claim upon which relief can be granted. Munoz v. Orr, 559 F. Supp.1017, 1019 (W.D. Tex. 1983). In analyzing a motion to dismiss under 12(b)(6), a court is to take all of plaintiff's well-pleaded facts as true. Hishon v. King & Spaulding, 467 U.S. 69, 104 S.Ct. 2229, 2232 (1984). The facts pleaded, however, must be specific and not mere conclusory allegations or unwarranted deductions. Guidry v. Bank of LaPlace, 954 F.2d 278, 281 (5th Cir. 1992). A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the claimant's allegations. Hishon, 104 S.Ct at 2232.

Title VII prohibits discrimination in federal employment on the basis of race, religion, sex, or national origin and is the exclusive remedy for claims of discrimination in federal employment. Brown v. General Services Admin., 425 U.S. 820, 96 S.Ct. 1961, 1969 (1976). If a federal employee brings a claim under Title VII and, based on the same set of facts, brings additional non-Title VII claims, the latter claims are barred. Rowe v. Sullivan,

967 F.2d 186, 189 (5th Cir. 1992) (claims for relief under 42 U.S.C. Section 1981, 1983 and 1985(3) arising from same facts as Title VII claim were preempted); Irwin v. Veterans Admin., 874 F.2d 1092, 1095-96 (5th Cir. 1989), aff'd on other grounds, 498 U.S. 89, 111 S.Ct. 483 (1990) (claims under 42 U.S.C. Section 1985 and 1986 were not sufficiently distinct; therefore, they were barred by exclusivity provisions of Title VII); Porter v. Adams, 639 F.2d 273, 277 (5th Cir. 1981) (employee's claim of reprisal for filing discrimination complaint could not be brought under Fifth Amendment because Title VII provided the exclusive remedy).

Douglass groups her claims into nine "counts." Each count is devoted to a certain type of wrong committed by the FAA (e.g., racial discrimination in employment) and within each count there are numerous causes of action. Counts two through five concern Title VII and related causes of action. The following are Douglass' non-Title VII causes of action listed according to the count in which they appear:

1. Count Two, Racial Discrimination in Employment - Retaliatory Treatment: 42 U.S.C. Sections 1981, 1986; 28 U.S.C. Sections 1331, 1391, 1943(a).

2. Count Three, Physical Handicap Disability Discrimination in Employment: 42 U.S.C. Sections 1981, 1986; 28 U.S.C. Section 1943(a), 1391(e).

3. Count Four, Sex Discrimination in Employment: 42 U.S.C. Section 1986; 28 U.S.C. Sections 1343(c), 1391(e).

Each count in the complaint sets out the alleged facts that Douglass believes establish her right to recovery under the statutory provisions she cites. Douglass has not distinguished the facts supporting her non-Title VII

discrimination claims from those supporting her Title VII claims; nor can the Court make such a distinction. Because Douglass has failed to establish an independent factual basis for her non-Title discrimination claims, those claims must be dismissed.

2. Title VII Discrimination Claims

a. Proper defendant

In a Title VII action the only proper defendant is the head of the agency that engaged in the alleged discrimination. Lamb v. United States Postal Service, 852 F.2d 8 52 F.2d 845, 846-47 (5th Cir.1988); Hall v. Small Business Admin., 695 F.2d 175, 180 (5th Cir. 1983). Thus, here, the Secretary of the Department of Transportation is the only proper defendant, and all other defendants must be dismissed as to the Title VII claims.

b. Administrative prerequisites to suit

The government moves for dismissal of Douglass' Title VII claims on the ground that Douglass failed to exhaust her administrative remedies prior to bringing suit in federal court. Because exhaustion of administrative remedies is a jurisdictional prerequisite to suit in federal court, this argument is treated as a request for dismissal under Rule 12(b)(1). See National Ass'n of Gov't Employees v. City Public Service Bd. of San Antonio, 40 F.3d 698, 711 (5th Cir. 1994) (court has not jurisdiction to hear Title VII case when aggrieved party has not exhausted administrative remedies); Tolbert v. United States, 916 F.2d 245, 247 (5th Cir. 1990) (same). When determining if dismissal under 12(b)(1) is warranted, a court may decide the issue of subject matter jurisdiction on the basis of (1) the complaint alone; (2) the complaint and any undisputed evidence; or (3) the complaint supplemented by undisputed

facts plus the court's resolution of disputed facts. Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir.), Cert denied, 454 U.S. 897 (1981).[4]

The first step for a claimant seeking redress under Title VII is to meet with an equal employment opportunity (EEO) counselor within fort-five days of the alleged unlawful employment practice for pre-complaint counseling. 29 C.F.R. Section 1614.105. Failure to meet this requirement bars a complaint from being filed in federal court, absent an adequate showing by the employee of waiver, estoppel, or equitable tolling. Rodgers v. Scott, 901 F. Supp. 224, 228 (N.D. Tex. 1995); Ross v. Runyon, 858 F.Supp. 630, 637 (S.D. Tex 1994).

Here, the government submitted the declaration of Arturo Montoya, the Civil Rights Manger of the FAA Southwest Region. this declaration lists Douglass' complaints filed under Title VII and the extent to which she pursued administrative remedies. Douglass has not filed any contravening evidence.[5] Based upon Montoya's declaration, the following discrimination complaints cannot be the basis for an action in this Court because Douglass failed to contact an EEO counselor within forty-five days of the alleged discriminatory conduct and has not produced any evidence that would support a finding of waiver, estoppel, or equitable tolling:

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[4] A district court may consider affidavits or other matters outside the pleadings when deciding a motion to dismiss under Rule 12(b)(1). See Voisin's Oyster House, Inc. v. Guidry, 799 F.2d 183, 188 n.5 (5th Cir. 1986).

[5] Douglass' only attempt to show she has exhausted administrative remedies is her argument that she satisfied this requirement when she filed her first complaint with the agency. She cites no authority for this proposition and the Court will not treat her argument as contravening Montoya's declaration.

1. Complaint filed October 24, 1993 and amended November 1, 1993, alleging discrimination based on whistleblowing activity and religion.

2. Complaint filed October 27, 1993 and amended November 1, 1993, again alleging discrimination based on whistleblowing activity and religion.

c. Failure to wait 180 days

If the discrimination action is not resolved through counseling with an EEO counselor, the complainant has fifteen days from the receipt of notice of right to file a formal complaint to file such a complaint with the EEOC. 29 C.F.R. Section 1614.105. A claimant who then wishes to pursue her claims in federal court must have either received a final agency decision on her complaint or waited 180 days from the date the complaint was filed with no agency action. If there has been no agency activity after 180 days, the claimant may continue to wait for agency or EEOC action or may proceed with her claim in court. 42 U.S.C. Sections 2000e-16(c); Gomez v. Dept. of the Air Force, 869 F.2d 852, 857-58 n.13 (5th Cir. 1989). But if a final decision has not been issued and an impatient claimant does not wait 180 days to file in district court, the complaint is premature and will be dismissed. Munoz v. Aldridge, 894 F.2d 1489, 1492-93 (th Cir. 1990); Porter v. Adams, 639 F.2d 273, 275-76 (5th Cir. 1981)

Defendants seek dismissal of a number of Douglass' claims based on her failure to wait the necessary time prior to filing this action. Douglass response that she exhausted her administrative remedies because she waited 180 days after filing the first charge before filing her complaint in federal court and all her later charges were simply follow-up to the original charge. Finding no authority for Douglass'

position, the Court dismisses her discrimination claims based on the following complaints, on which there had been no final agency action at the time this action was filed and 180 days had not elapsed since Douglass' filing of the complaints with the FAA:

1. Complaint filed March 15, 1994, alleging sex and reprisal discrimination.

2. Complaint filed April 20, 1994, alleging discrimination based on sex and reprisal. Also filed under Rehabilitation Act for handicap discrimination.

3. Complaint filed May 2, 1994, alleging sexual harassment by Ernst.

4. Complaint filed May 10, 1994, alleging sexual harassment by Halliburton.

d. Racial discrimination claim

Prior to filing this action, Douglass exhausted her remedies as to only one of her administrative complaints, the complaint filed on June 1, 1993 alleging discrimination on the basis of race, sex, and reprisal. The racial discrimination portion of this complaint, however, must be dismissed. Douglass asserts this claim under 42 U.S.C. Section 2000a-6, which prohibits discrimination in public accommodations and has no application under the facts of this case. The government's motion clearly explains that Douglass can
only seek relief under Section 2000e-16, but she has refused to proceed under this section. Therefore, Douglass' racial discrimination claim under 42 U.S.C. Section 2000a-6 is dismissed.

e. Remaining Title VII claims

Two Title VII claims have not been dismissed, discrimination based on whistleblowing activity and gender.

Although Douglass did not designate Frederico Pena, the Secretary of Transportation by name, considering her pro se status, the court will permit her to amend the complaint to do so, provided she serves the Secretary with the amended complaint. Further, the court denies summary judgment on these claims based on the current state of the record. A party moving for summary judgment bears the initial burden of establishing that there is no issue for trial; it may do so by pointing out the lack of evidence supporting the non-moving party's claims. Duffy v. Leading Edge Products, Inc. 44 F.3d 308, 312 (5th Cir. 1995). In its motion, the government neither set forth the elements of Douglass' discrimination claims, nor pointed to the lack of evidence supporting each element. Absent such a showing, Douglass was not required to establish a genuine issue of material fact. Accordingly, these claims remain for future consideration.

B. Privacy Act Claim

Douglass posits that her first call to the FAA hotline was a protected record under the Privacy Act, and that when her hot-line control number was disclosed, the Act was violated. 5 U.S.C. Section 552a, et seq. She has attached to her response to the government's motion a notarized copy of the hot-line complaint sheet, articles from the Fort Worth Star Telegram, and copies of the FAA internal memoranda concerning her call. Because the Court considered this evidence, the government's motion as to this claim will be treated as one for summary judgment. Rule 12(b).

After the party moving for summary judgment has made an initial showing that there is no material issue of fact, the party opposing the motion must come forward with competent summary judgment evidence establishing the

existence of a genuine fact issue. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348, 1355 (1986). If the non-moving party is unable to show a fact issue exists, the motion for summary judgment must be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2511 (1986).

Initially, the Court notes that the only proper defendants as to this claim are agencies; therefore, all individual defendants are dismissed from this cause of action. Petrus v. Bowen, 833 F. 2d 581, 582-83 (5th Cir. 1987).

The Privacy Act, 5 U.S.C. Section 552a (g)(1)(c),provides, inter alia, that an individual may bring a civil action against an agency when it fails to properly maintain a record concerning that individual, as a result of which the person suffers adverse consequences. In order to qualify as a record, an item must be "about" an individual and contain the individual's name or other identifying particular. Toby v. N.L.R.B., 40 F.3d 469, 471 (D.C. Cir. 1994). Douglass has failed to show that the hot-line complaint sheet was "about" her. The fact that a record of her call was made does not make the call about her. Tobey, 40 F.3d at 471-72; Unt v. Aerospace Corp., 765 F.2d 1440, 1149 (9th Cir. 1985) (letter written by appellant was not about appellant). Accepting the allegations of the complaint as true, a record of Douglass' call would simply contain her statements about what she believed were the illegal activities of a third party. Further, Douglass has failed to show her identity as the caller was ever disclosed. All she has demonstrated in this regard is that her assigned hot-line control number can be used to access the database containing information about the call she made in 1988, and

that it was in fact used for this purpose. The government will be granted summary judgment on Douglass' Privacy Act claim.

C. Constitutional Claims

The government argues that Douglass' constitutional claims are preempted by the Civil Service Reform Act (:CSRA"), 5 U.S.C. Section 2301, et seq. This argument is treated as one for dismissal for failure to state a claim upon which relief can be granted under Rule 12(b)(6). See Palermo v. Rorex, 806 F. 2d 1266, 1270 (5th Cir.) cert denied, 484 U.S. 819 (1987).

Douglass claims several of her constitutional rights were violated during the course of her dispute with the FAA. She alleges, among other things, her Fifth Amendment rights were violated when she was suspended without a proper hearing, her Fourth Amendment rights were violated when FAA investigators obtained her college transcript without her express written consent, her First Amendment rights were violated when she was retaliated against for following God;s law by speaking out against the illegal practices within the FAA, and her Fourteenth Amendment rights were violated by the pervasive sexual harassment she experienced.

In Bivens v. Six Unknown Named Agents of FBI, the court held that in some circumstances a plaintiff may bring a claim against the government for certain constitutional violations. 403 U.S. 388, 91 S.Ct. 1999 (1971). the ability to bring a Bivens claim, however, may be limited where special facts counsel hesitation or congress clearly has intended to provide another remedy as a substitute for a Bivens action. Bush v. Lucas, 462 U.S. 367, 103 S.Ct. 2404, 2411 (1983). In Bush, the court found that the

administrative framework established by the CSRA, with its comprehensive nature, provided the exclusive remedy for a federal employee's claim that his employer violated his First Amendment rights. 103 S.Ct. at 2416-17. The Fifth Circuit has applied the Bush analysis to preclude Bivens claims by federal employees under the First, Fourth, Fifth, and Sixth Amendments. Rollins v. Marsh, 937 F.2d 134, 139 n.24, 25 (5th Cir. 1991). In fact, no court yet has found a federal employee's Bivens claim that has not succumbed to the Bush analysis. Id.at 139. Thus, while Rollins did not specifically address claims under the Thirteenth and Fourteenth Amendments, the court finds its holding equally applicable to such claims.

Douglass was a federal civil service employee and the alleged constitutional violations arose during and related to Douglass' federal employment relationship; therefore, Douglass must pursue her remedies under the CSRA. Rollins, 937 F.2d at 138.

D. Non-Constitutional Tort Claims

Douglass asserts numerous claims for non-constitutional torts committed by individuals and entities during the course of her employment relation with the FAA. Without listing all her claims, the Court notes as an example that Douglass alleges the conspiracy to terminate her employment in May 1993 resulted in her suffering severe emotional distress, defamation of character, property loss and was an act of malicious prosecution.

The government argues that these claims can be brought only against the United States under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. 2671, et seq. because the individual defendants were acting within the scope of their employment. It also contends these claims are not

FTCA and state law claims against several government officials and the Secretary of the Army. The court found that "Congress's purpose in enacting the CSRA was to channel grievances and disputes arising out of government employment into a single system of administrative judicial review." Id at 139 (quoting Rivera v. United States, 924 F.2d 948 (9th Cir. 1991)). The existence of the CSRA prevents a federal employee from bringing claims arising from her federal employment relationship under either the FTCA or state law. Id. at 139-140. Inasmuch as Douglass has not shown she has exhausted administrative remedies under the CSRA, her state law claims re not properly before the Court. Ferry v. Hayden, 954 F.2d 658, 661 (11th Cir. 1992).

E. Other Allegations

Finally, Douglass makes some generalized complaints about how she was unlawfully discharged as a result of her disclosure concerning Murphy's alleged illegal activities. But she has not specifically pleaded any cause of action in this regard, and the Court cannot determine what relief she is requesting. Therefore, these generalized allegations are dismissed without prejudice. If Douglass wishes to pursue these matters throughout this action, she must specifically set forth the relevant facts, the nature of her claims, and the relief requested.

## III. CONCLUSION

Accordingly, it is ORDERED that the following claims are DISMISSED with prejudice:

1. All Title VII claims against all defendants except those against Secretary of Transportation Frederico Pena as set out below.

action in this regard, and the Court cannot determine what relief she is requesting. Therefore, these generalized allegations are dismissed without prejudice. If Douglass wishes to pursue these matters throughout this action, she must specifically set forth the relevant facts, the nature of her claims, and the relief requested.

## III. CONCLUSION

Accordingly, it is ORDERED that the following claims are DISMISSED with prejudice:

1. All Title VII claims against all defendants except those against Secretary of Transportation Frederico Pena as set out below.

2. All title VII claims against Secretary Pena that were dismissed by the EEOC for failure to contact an EEO counselor within forty-five days of the alleged discriminatory conduct.

3. All Title 28 and Title 42 claims against all defendants.

4. All constitutional claims against all defendants.

5. All non-constitutional tort against all defendants.

It is further ORDERED that the following claims are DISMISSED without prejudice:

1. All title VII claims against Secretary Pena that were dismissed because Douglass filed a claim in this Court before 180 days had run from the filing of her Title VII complaint. She may re-file these claims if she establishes that she as exhausted her administrative remedies in regards to these claims.

2. The claim alleging retaliation for whistleblowing activity. Douglass may re-file this claim provided she complies with the directions set out in section E of this opinion.

It is further ORDERED that to the extent that Douglass desires to proceed with this action, she shall file an amended complaint naming the Secretary of Transportation, Frederico Pena, as sole defendant with regard to her remaining Title VII claims alleging sex-based-discrimination and discriminatory reprisal arising from her suspension on March 29, 1993. The amended complaint shall include only those facts necessary to support her remaining claims of discrimination based on gender and whistleblowing and her claim of unlawful discharge. Douglass shall serve Secretary Pena with this amended complaint by June 28, 1996 and provide proof of service to the Court by July 19, 1996. Failure to comply with this order shall result in the dismissal of Douglass' remaining claims.

Signed 21st day of May 1996.

## APPENDIX C

Sixteen photographs demonstrating the evil Petitioner has endured by the alleged FAA witch in an attempt to show this Court the danger and evil affects of witchcraft, and the conjuration of evil spirits in an attempt to murder Petitioner. The photographs begin on April 19, 1996, with the last picture taken March 10, 1997. The photographs were taken with a 35 mm camera, bubular speed, no flash, open shutter to the count of 10 seconds of evil beings in Petitioner's bedroom and living room. The photographs were requested by local police as a result of Petitioner filing many complaints about telephone harassment and complaints alleging Ms. Scales was attempting to murder Petitioner covertly, transformed as the witch. An incident report on all the evil conjuration Petitoner was suffering was lodged with the local police, but nothing was done about the witchcraft when presented with the photographs and movie film. Police stated there was no law, allowing any investigation. NOTE: These pictures are under copyright and are not to be reproduced.

1. Photograph taken by Petitioner of her bed on the eve of April 19, 1996, a reference point for identity of area that is natural on this plane.

2. Photograph of the witch lying sideways at the top of the bed, with her arm reaching toward the camera in an attempt to block the photograph. This photograph was enlarged in order to see the face better. Note the long hair crossing the body.

3. The witch has her arm raised just before hitting Petitioner.

4. This window is the doorway to another plane. This is the focus point of evil passing into Petitioner's home. Please note the "Eye of God" in the bottom left corner payne, framed in a rectangular box.

5. This photograph shows the red energy, (Glory of God) that protects Petitioner from the evil creatures.

6. This is Satan in serpent form. Satan has no light about him, its believed the serpent is being escorted out the window by God.

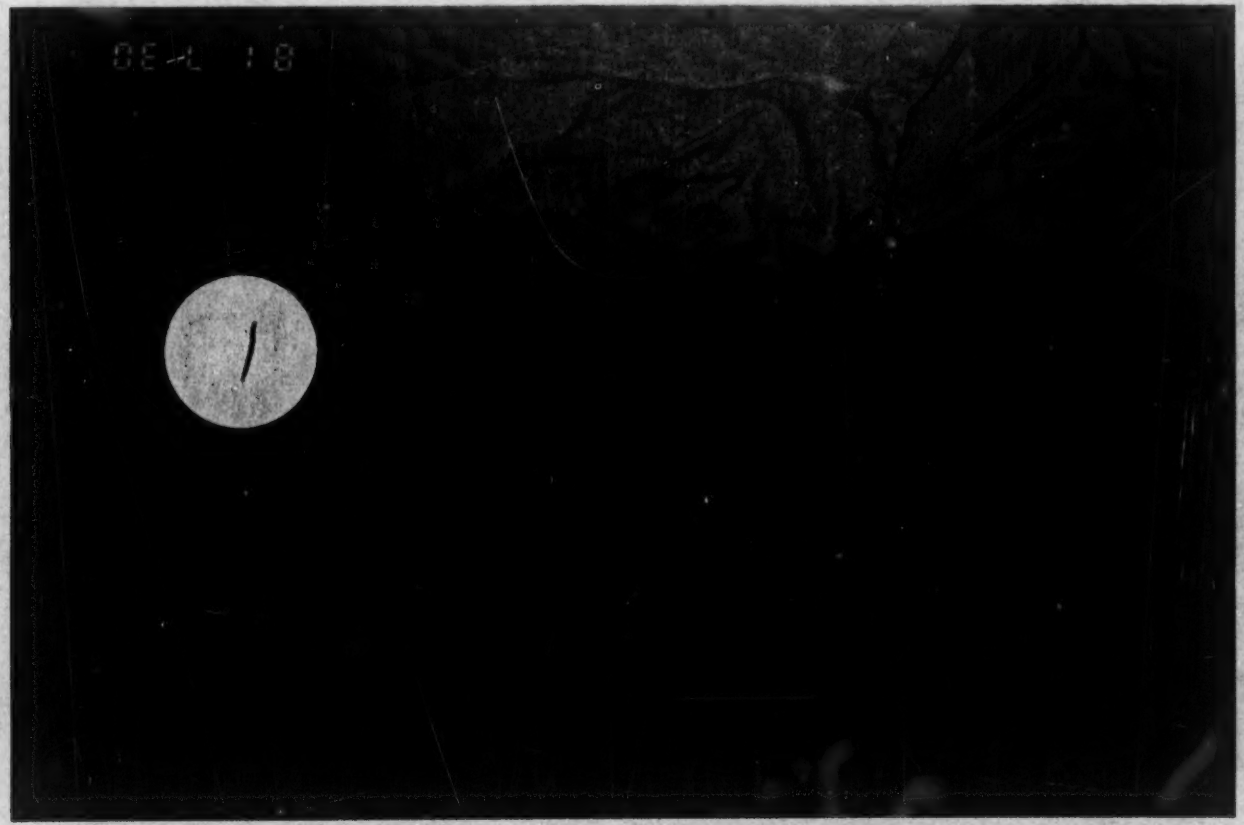
7. These are poisionous snakes conjured by the witch in an attempt to murder Petitioner. Again, through the summer of 1996, Petitioner had snake bits on her legs, arms, and neck, but again God saved her.

8. This picture is the witch on her broomstick entering the bedroom, probably on a photon at the speed of light. Note her feet on the light beam.

9. Apparently, when the witch lands the broomstick, she becomes the fireball, or in this case a flying serpent or spiritbird. Petitioner believes the fingers of God, are holding the witch in one place. This was at a time when Petitioner's left ear was being penetrated by this flying serpent, spiritbird night and day until it ruptured her ear drum October 30, 1996, Petitioner suffered hearing loss in her left ear. Again the witch is attempting to murder her. Petitioner sought

medical attention, when so many sores were on her ear. The ear specialist had not seen anything like it, wouldn't charge Petitioner since he said he couldn't cure Petitioner. Petitioner went to the emergency room at a local hospital when her ear got so bad, the physician admitted he had never seen anything like it and recommended Petitioner go to the University of Texas Southwestern Medical School. A biopsy was done on a sore, and was diagnosed as undiagnosed tissue, with a foreign body of plant material.

10. Satan, in dog form, red eye, attacking through the right bottom payne of the window with energy. Two white spots on Petitioner's headband top of the forehead. Feels like a laser going through cutting like a knife. Suffered many of these attacks. Finally put the camera on top of books in the bed, when Petitioner felt the attack, she held the shutter open on the camera to the count of 10 seconds, no flash..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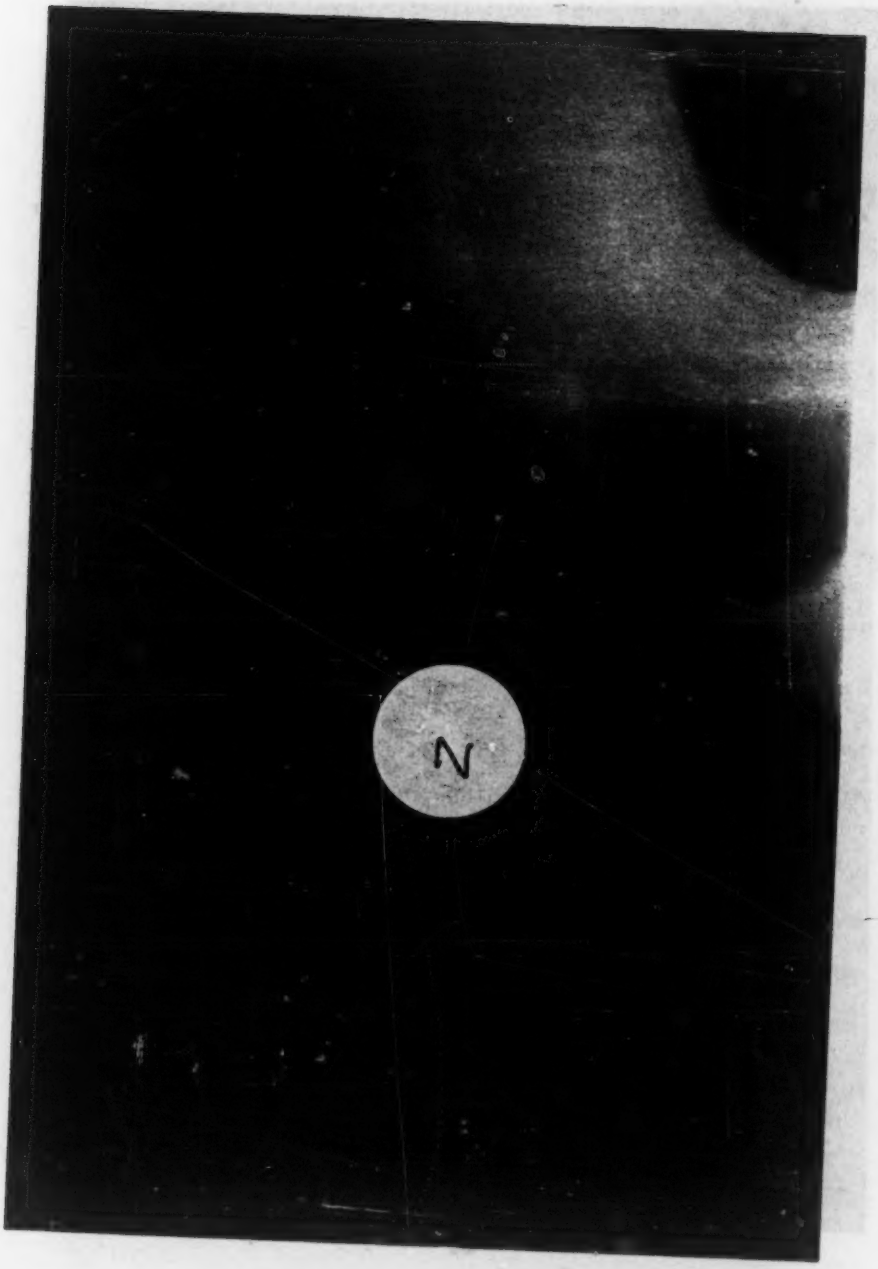
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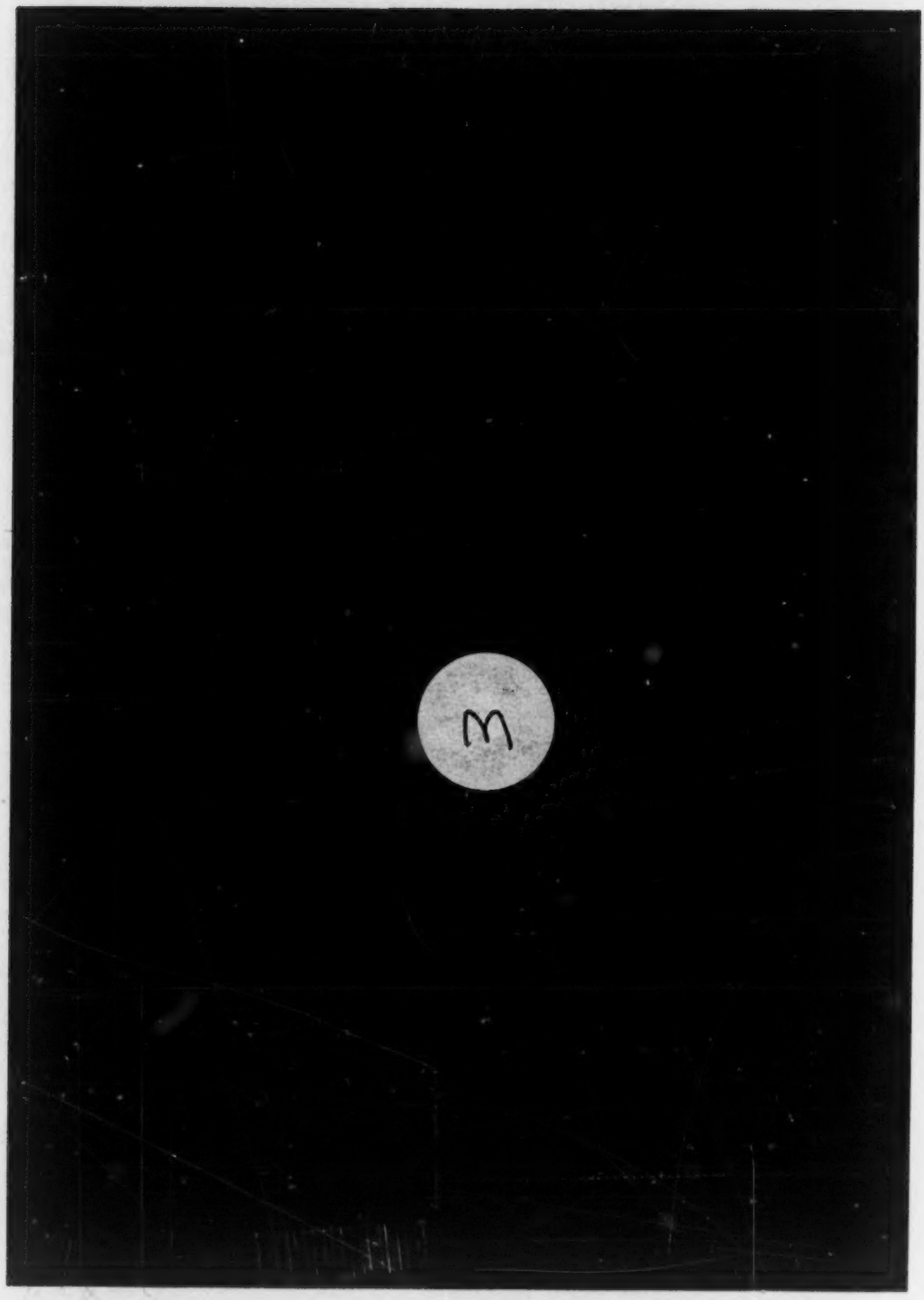

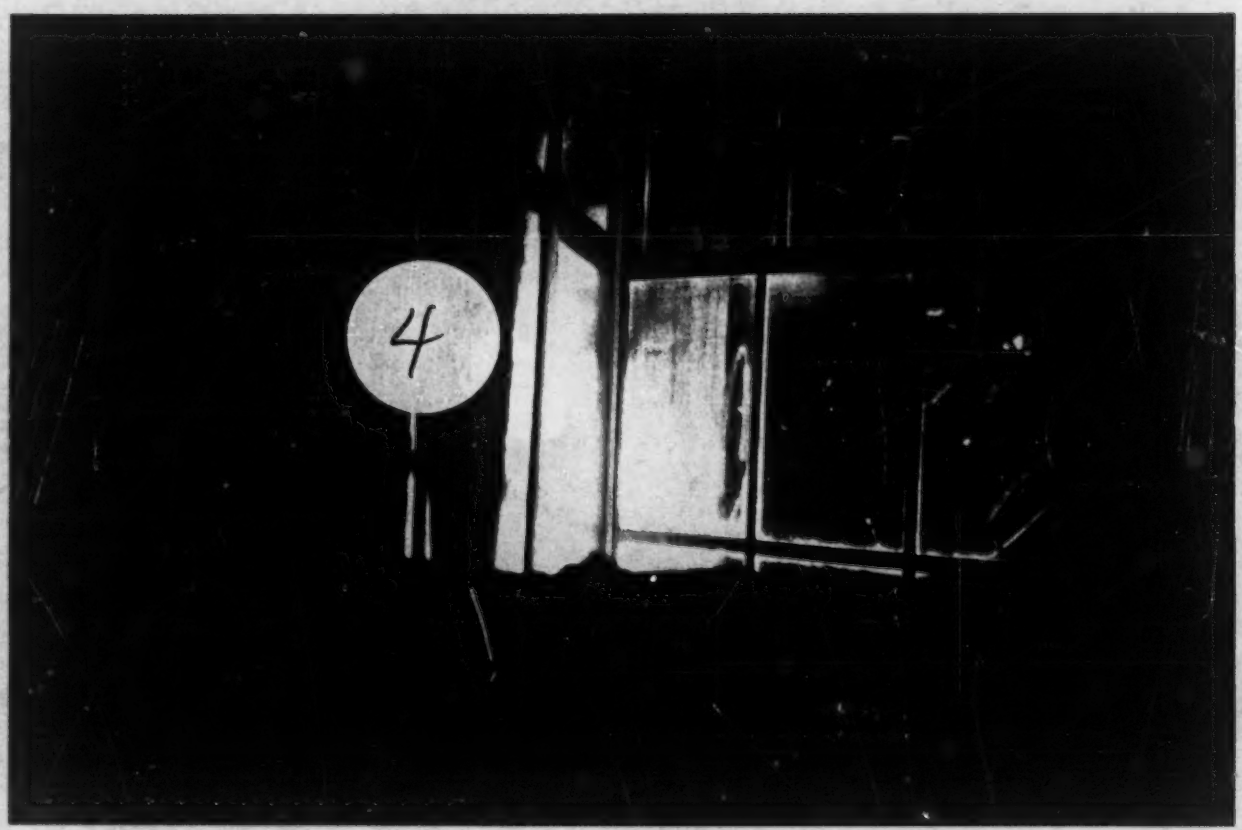
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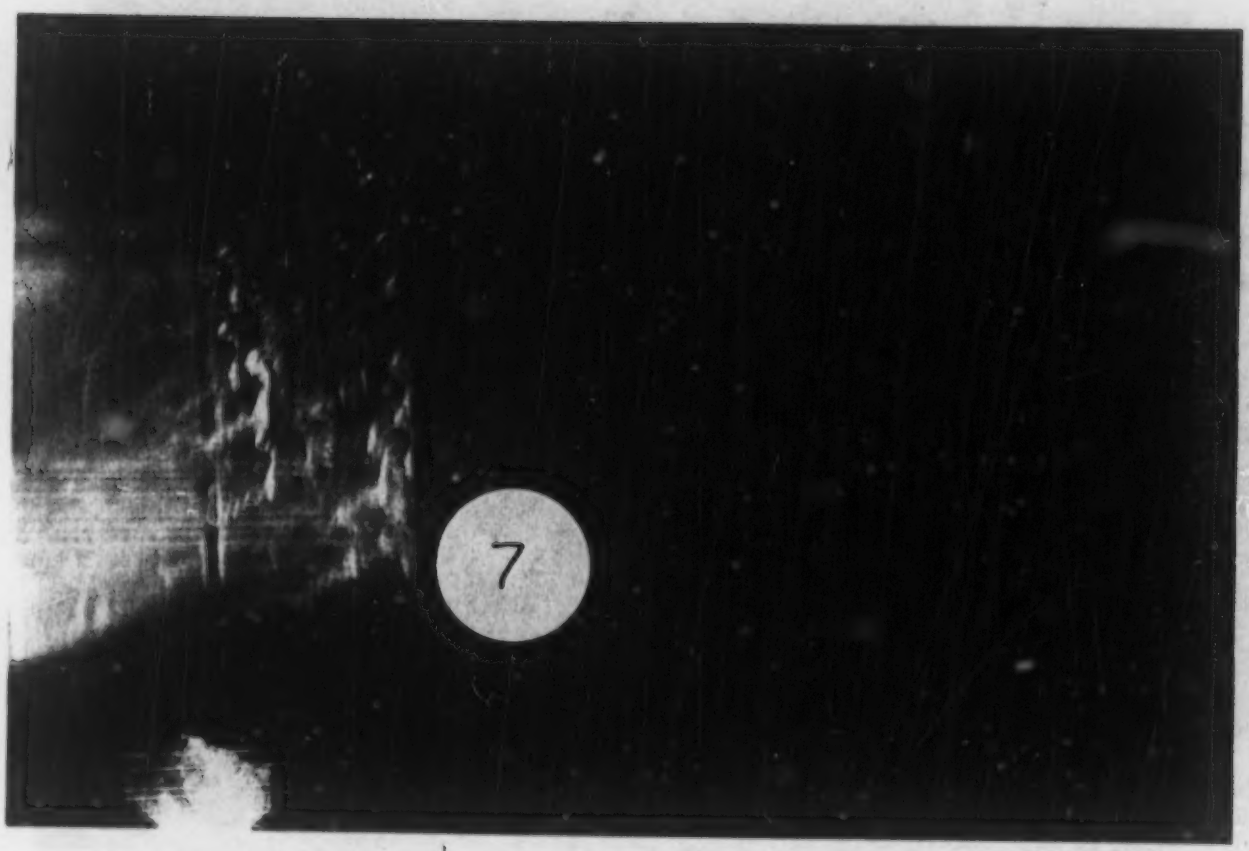
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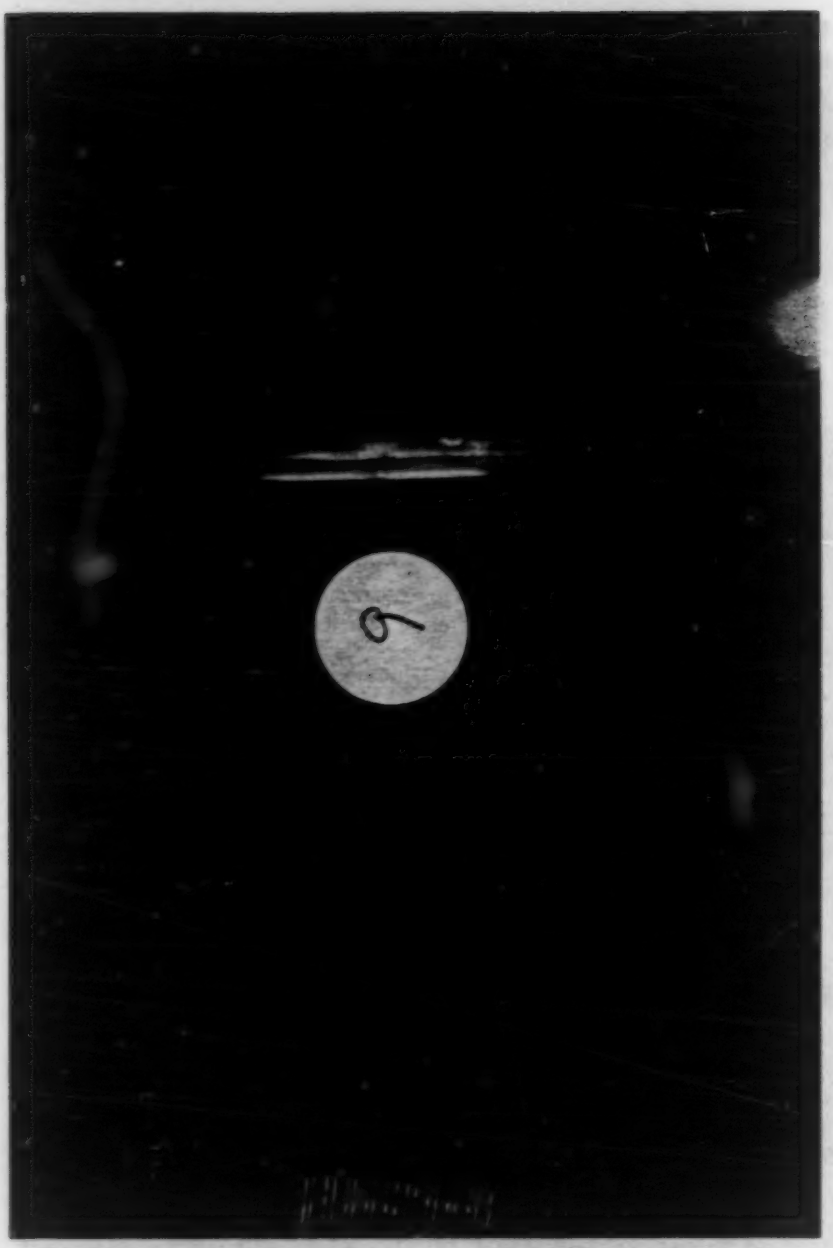

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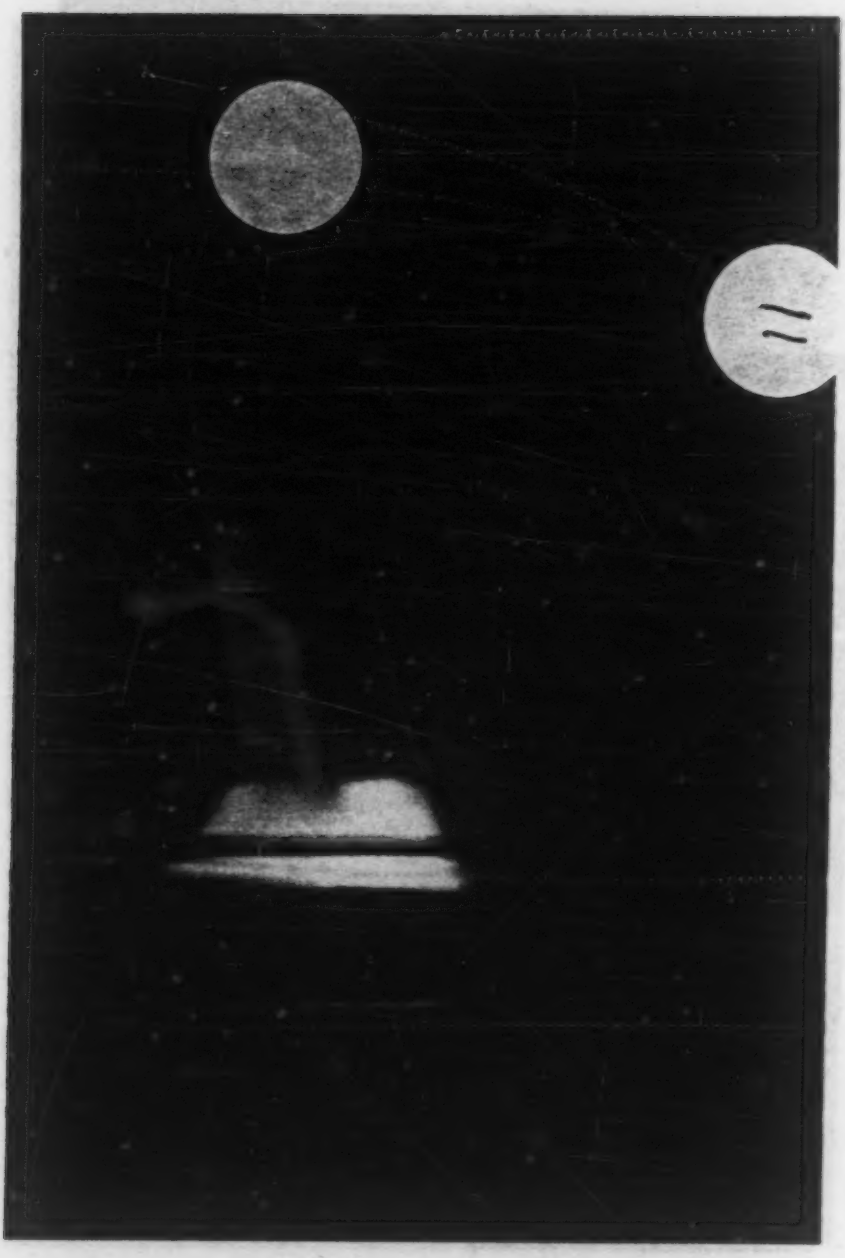

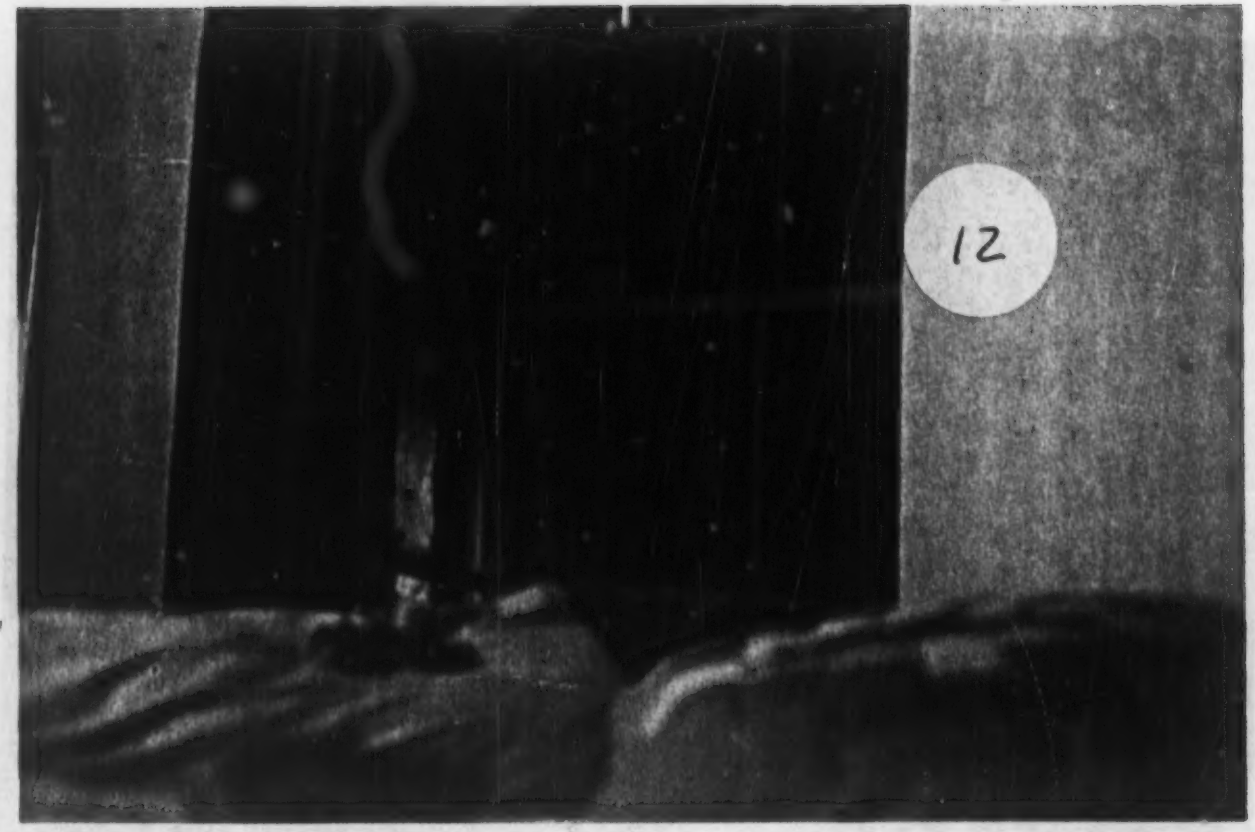
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